

April 28, 2005

Darrell Beatley
Principal
TranSystems Corporation
150 Boush Street
Suite 1000
Norfolk, VA 23510

**RE: REQUEST FOR ADVISORY OPINION RQO 05-31
Darrell Beatley**

Dear Mr. Beatley:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on April 27, 2005 and rendered its opinion based on the facts stated in your letter.

You requested an opinion regarding any conflicts between the firm's current contract with the Seaport and responding to an RFP to prepare a feasibility study for the redevelopment of the Port of Miami Terminal Operating Company (POMTOC).

In your letter, you advised the Commission that POMTOC recently issued a Request for Proposal for a firm to conduct a feasibility study for the redevelopment of POMTOC and the potential construction of a new gate complex as well as the possible implementation of rubber tired gantries.

The objective of the study is to define the optimal size and location of the new gatehouse; the suitability of the existing pavement for RTG operation; order of magnitude construction cost estimates for the

conversion to RTG operation; construction program; phased container handling capacity through conceptual layouts (top loader and RTG) and optimal layouts for both combined top loader/RTG and full RTG operation.

POMTOC holds a long-term lease for a 117 acre multi-user container terminal in the Port of Miami. POMTOC is seeking to increase the capacity of the terminal through the conversion of the gatehouse facility.

Transystems currently has a miscellaneous engineering contract to provide capital development services at the Seaport. The outstanding work orders require Transystems to provide consultation on tenant improvements, port infrastructure projects, Florida State Ports Authority initiatives, port access facility operations. Towards that end, Transystems is convening a series of round table discussions with various entities (terminal operators, stevedores and union leaders) regarding facilities, operations and business practices. Transystems is also developing a tariff schedule for recovery of various security costs.

The Commission found that Transystems may provide services to POMTOC while serving as capital development engineer for the Port of Miami. Transystems' current work for the Seaport should not conflict with the scope of work contemplated by the POMTOC Request for Proposal. Further, the scope of work should not require Transystems to evaluate its prior work for the Seaport.

In a series of opinions, the Ethics Commission has opined that certain contractual arrangements create an inherent conflict of interest and should be determined prior to award. For example, a conflict exists if a contractor has overlapping responsibilities on different phases of the same project (i.e. AE on one phase of the project and serving as value engineer, CIS or

CM partner on another phase of the project; supervisor or prime on one phase of the project and subcontractor on another or related phase or project). Further a conflict may exist if there are overlapping roles or responsibilities between two related contracts. These arrangements create conflict because they lead to disclosure of confidential information and impair independent judgment by the contractor in the performance of its contractual obligations.

Transystems will not serve in overlapping roles by providing the services included in the two work orders and the services contemplated under the POMTOC request for proposal. Further, Transystems will not serve in a related role with another company for which it is currently serving as contractor or subcontractor at the Seaport. Therefore, Transystems may serve in the two roles at the Seaport. However, the Seaport and POMTOC must coordinate future assignments to ensure that a conflict is not created by other work orders during the eighteen-month term of the capital development program.

This opinion construes the Miami-Dade Conflict of Interest and Code of Ethics ordinance only and is not applicable to any conflict under state law. Please contact the State of Florida Commission on Ethics if you have any questions regarding possible conflicts under state law.

If you have any questions regarding this opinion, please call the undersigned at (305) 579-2594 or Ardyth Walker, Staff General Counsel at (305) 350-0616.

Sincerely Yours,

ROBERT MEYERS
Executive Director

